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# Borderland or Neighbour: Policies for EU-Ukraine Cooperation in Justice and Home Affairs

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## **Introduction**

As the EU enlargement process develops and Ukraine's immediate neighbours to the west are preparing to introduce the Schengen regime, it becomes increasingly obvious that neither Ukraine nor the EU, not the candidate states that are to join the EU in the near future, are fully prepared for the new situation and have a clear understanding of ways of attaching practical meaning to declared determination to prevent the emergence of new division lines in Europe and expand cooperation. While the mutual intentions to develop a working relationship have been officially declared, Ukraine and the EU need to produce effective solutions to the challenges linked to the enlargement, and develop sound policies to involve Ukraine in cooperation and the European integration processes.

The reports on the progress of the 12 candidate states towards accession, presented by the European Commission on November 13, 2001, indicated that all of them except Romania and Bulgaria are on track for completing accession negotiations in 2002 and would be consequently able to join the EU in 2004. Hence, Ukraine and the EU have no more than two years to craft policies that would prevent the substitution of the Berlin Wall with the "Schengen Wall".

This paper addresses the impacts of the EU enlargement on Ukraine in the area of justice and home affairs (JHA) and proposes solutions to new challenges that stem from the introduction of visas by the neighbouring applicant countries, toughening of border procedures and struggle with illegal migration, in order to make sure that new arrangements do not hinder cross-border exchange, personal, tourist and business contacts between Ukraine and the enlarged EU.

The first section of the paper outlines the scope of the JHA issues to be addressed jointly by Ukraine and the EU. The second section summarises the previous efforts, documents and policies designed to address the issues of the JHA. In the third section, the current status of the issue is reviewed, with particular emphasis made on the problems of countering illegal migration through the territory of Ukraine, supply of illegal labour from Ukraine to the EU states and the accession states, and the potential impacts of introduction of visas on cross-border exchange and contacts between populations of Ukraine and the enlarged EU. The fourth section discusses actors and stakeholders affected by the issue, particularly the Ukrainian government and population, the neighbour states – candidates for the EU membership, particularly Poland, and the EU. The section also looks at institutions involved in cooperation in the JHA. The fifth section of this paper outlines options for consideration, and the sixth section offers some initial financial considerations. The final section offers conclusions and recommendations for addressing the issue and expanding the EU-Ukraine cooperation in the JHA.

## **1. Scope of the Problem**

The need for fostering Ukraine – EU cooperation in the field of the JHA is determined by the seriousness of challenges that may arise (and, in fact, have started to arise) due to the lack of adequate policy of dealing with the issue. Specifically, the scope of the problem can be defined as follows:

Illegal migration through the territory of Ukraine to countries of the EU.

Labour migration from Ukraine (including illegal labour migration) to countries of the EU.

Introduction of visas for Ukrainians by EU candidate states, following the requirement of the Schengen regime as a prerequisite to the EU accession, and the related limitations on cross-border contacts and cooperation.

Potential threat of mistreatment of representatives of “other” ethnic groups by law enforcement bodies involved in countering illegal migration, and potential growth in prejudice against representatives of selected “other” ethnic groups among Ukrainians and the population of countries of the enlarged EU.

1.1. The complexity of the challenges faced by Ukraine, the lack of unbiased information and capacity to counter the challenges effectively, have provoked - amid increasingly frequent warnings that Ukraine risks to deteriorate into a collector for illegal migration and organized crime and growing resentment among Ukrainians of being treated as potential illegal migrants by consulates of EU states - a specific "side effect". While accurate data about correlation between illegal migration, organized crime and drug trafficking are unavailable, Ukrainian law enforcement authorities often tend to link the three phenomena in their public statements, thus, adding to increasing prejudice to representatives of "other" ethnic groups and countries in the Ukrainian society.

1.2. Efforts to fight illegal migration have produced a specific “side effect” of growing prejudice and intolerance. As fighting illegal migration was identified as a key national security concern, in 2000 the number of visas issued by Ukraine to citizens of countries regarded as potential donors of illegal migrants - Angola, Afghanistan, Bangladesh, Vietnam, Ghana, India, Jordan, Iraq, Iran, the Democratic Republic of Congo, China, Lebanon, Libya, Morocco, Nigeria, Pakistan, Syria, Somalia, and Sri Lanka - was radically reduced. In January-June 2000 about 149,000 Ukrainian visas were issued, almost 90% of them to citizens of European countries, the USA and Canada.

1.3. Ukrainians themselves are affected by growing xenophobia in the EU and the candidate states where public apprehension of the influx of cheap labour, potential instability and effects of increasing heterogeneity of the population on national identity are on the rise. It is estimated that some 500 thousand illegal immigrants arrived to the EU states in 2000, compared to about 40 thousand in 1993. The influx of immigrants to Western Europe, both legal and illegal, has increased by 20 times within the last decade, and Ukraine is seen as one of the key transit territories. Some 60-70% of illegal migrants are reported to arrive to countries of Western Europe through Ukraine.

1.4. As the western border of Ukraine becomes "harder" with the adoption of the Schengen rules by the candidate countries that border on Ukraine and the “porosity” of Ukraine’s eastern and northern borders remains, thousands of illegal migrants are likely to stay on the Ukrainian territory. Since the situation in countries that are among leading donors of illegal migration is unlikely to improve fast, the challenge, created by illegal migration, as well as related challenges

of organized crime, trafficking in human beings and drugs, are likely to remain among the main points of concern for Ukraine as well as for the EU.

1.5. The issues of migration and visas touch the interests of millions of Ukrainian citizens and their neighbours across the would-be new EU border. According to the State Committee of Ukraine for the State Border Protection, only in the first half of 2001, over 3 million Ukraine's citizens made trips to the EU candidate states. At the Polish-Ukrainian border alone, over 10 million persons cross the border every year. The cross-border contacts and trade have created hundreds thousands of jobs at both sides of the border.

1.6. Another significant issue is labour migration from Ukraine. The problem of regulation of labour migration and social protection of Ukraine's citizens deserves special attention, since the introduction of the European regulations in the applicant countries will inevitably limit the possibilities for employment of Ukrainian citizens. Ukraine has already made relevant agreements with some countries (Latvia, Poland, Slovakia, the Czech Republic), and entered into negotiations with other candidates. The EU enlargement raises the issue of an agreement with the EU about the preservation of those agreements in an acceptable format.

1.7. Intensified measures against illegal immigration in the EU states will make illegal workers return to Ukraine, which (given the reported number of illegally employed) will enhance on the domestic market of labour. At the same time, defensive measures alone taken by the EU member states and the candidate states will not prevent illegal employment of Ukrainian citizens on their soil. Alone, Ukraine will be unable to promptly cope with the task of radical reduction of the unemployment rate and significant increase of the living standards of the population, and simultaneously serve as a barrier to illegal migration to the EU. Unless urgent and adequate measures are taken, the supply of illegal labour force from Ukraine and illegal migration through Ukraine will continue to exist and encourage the demand for it on the part of the shadow sector of economy in the EU countries.

1.8. The September 11 events in the USA and the subsequent allied attack on terrorism demonstrated growing interdependence and vulnerability of the world and increased the significance of effective cooperation in the field of the JHA. The role of Ukraine as a partner of the EU in countering illegal migration, trafficking and organized crime has increased. However, while understanding of the need for cooperation has been achieved, an effective policy is still lacking.

## **2. Background**

2.1. In 1994, Ukraine was the first among countries of the Commonwealth of Independent States (CIS) to sign a Partnership and Cooperation Agreement (PCA) with the EU and join the Council of Europe. European integration was declared to be the government's strategic goal. Shortly after the PCA came into force, on June 11, 1998 the President of Ukraine approved the Strategy of Integration of Ukraine to the European Union. The particular emphasis was made on the fact that as a result of the EU eastward enlargement to include Poland and Hungary Ukraine would have a common border with the EU, which "would create a principally new geopolitical situation". The Strategy, built heavily on the Polish EU accession strategy, defined acquiring a status of the EU associated member as a top middle-term foreign policy priority and specified cooperation with

the EU in the field of justice and home affairs (JHA), alongside with approximation of Ukrainian legislation to the EU legislation, economic integration and development of trade, as the principle guidelines of the integration process.

2.2. The Ukrainian leadership repeatedly called for consultations on ways of minimising potential negative impacts of the EU enlargement for Ukraine, formalising and institutionalising Ukraine-EU relations in the field of JHA, foreign and security policy, military and military-technical co-operation, and, finally, reforming the system of Ukraine-EC bodies in order to enhance the effectiveness of all existing instruments in the relations between Ukraine and the EU. The proposals were formally presented as position papers and memoranda to relevant EU bodies: "Position paper for negotiations between Ukraine and the EU on minimising negative impacts connected with the EU enlargement" (early 2001), "Memorandum of Ukraine on concluding an agreement [on co-operation] between Ukraine and the EU in the field of the fight against organised crime" (at the Paris Ukraine-EU Summit on 15 September 2000), and a position paper on "Reflection of the Ukrainian side on a Joint Action Plan on Common Action between Ukraine and the EU in the Area of Justice and Home Affairs" (at the third meeting of the Co-operation Committee between Ukraine and the EC on 18 December 2000). The commitment to develop the Joint Action Plan in the Area of JHA and enhance cooperation in the field was stressed in the Conclusions of the EU-Ukraine summit in Yalta in September 2001.

### **3. Current Status**

The current conflicts, political and economic conditions in countries that are generally seen as main donors of illegal migration do not suggest any fast improvement. Similarly, the present socio-economic situation in Ukraine gives no reason to hope for any quick radical changes on the domestic market of labour and a decrease in the number of people who for economic reasons work or look for jobs abroad. Therefore, the need to cope with the issues remain a high priority for Ukraine and the EU.

#### **3.1. Transit illegal migration**

3.1.1. According to various data, the estimated number of illegal migrants from countries of Asia and Africa in the territory of Ukraine exceeds 100,000 persons. However, the figure, currently available from the borderguard and security services, reflects only the number of detained illegal migrants. Although the number of applications for Ukrainian citizenship increased from 5,763 in 1994 to 72,797 in 1999, the number of claimants of citizenship, asylum or permanent residence permits is not the principle matter of concern. To date, only about 3,000 persons, over 1,600 of them from Afghanistan, have a formal refugee status. The problem is that while in 1991 only 148 illegal migrants were detained on the territory of Ukraine, by the end of 2000 the figure had reached 15,000 a year. According to various estimates, at least 1,6 million illegal migrants have stayed on the territory of Ukraine, and more than 80,000 illegal migrants had been detained in 1991-1999, which cost the Ukrainian budget at least US\$ 300 million a year. In the first six months of 2001, units of just one agency – the Ministry of Internal Affairs of Ukraine – detained 12.3 thousand illegal migrants.

3.1.2. The issue of illegal migration has another dimension to it. In 1999-2000, illegal migrants on the Ukrainian territory became victims of 4,742 crimes and committed 1,240 crimes. Trafficking in human beings had grown into a leading “specialization” for the Ukrainian organized crime and the third most profitable activity after drug dealing and sales of stolen cars. An average cost of transporting an illegal migrant from a Middle East country to Western Europe is about \$6,000.

3.1.3. To counter that risk and improve its prospects for European integration, Ukraine has adopted a number of legal documents designed to help it improve the situation. Presently Ukraine has a broad (though still insufficient) legal framework for countering illegal migration and organized crime: the strategy of countering illegal migration, introduced by presidential decrees “On the Complex Program of Fighting Crime for 1996-2000” (September 1996), “The Issue of Immigration Control” (February 1999), and the Program for Fighting Illegal Migration for 1999-2000, the law “On Immigration” (July 2001). Ukraine ratified the European Convention on preventing money laundering, search, arrest and confiscation of assets obtained through criminal ways, as well as a number of other conventions on fighting organized crime, and signed bilateral agreements on mutual legal assistance in countering crime with Hungary, Finland, Poland, Cyprus, Lithuania, Estonia, and Latvia. However, Ukraine’s efforts to counter illegal migration are hindered by the lack of readmission agreements with countries of origin of illegal migrants and transit states. To cope, in mid-February 2001 the Ukrainian parliament passed a law “On Amending Some Legal Acts of Ukraine for Fighting Illegal Migration”, introducing criminal liability for repeated illegal border crossing. Also, the Criminal Code (Article 19) introduced criminal liability for organising or managing trafficking in human beings. On June 7, 2001, 351 out of 450 members of the Ukrainian parliament voted in favour of the law “On Immigration” that provided for introduction of an annual immigration quota (to be specified by the government) and for the establishment of a single national executive agency for migration. On July 4 the law was signed by the president of Ukraine and came into force one month later. The new law allows legalization of immigration status of a number of foreigners and stateless persons, for instance, those who arrived to Ukraine before March 6, 1998 under the April 1981 agreement between the USSR and Vietnam for professional training and work, or refugees from Abkhazia (Georgia) who have lived in Ukraine for at least five years. To qualify for immigration, such persons have to apply for it within six months since the enacting of the new immigration law. Immigration will also be open for officially registered refugees, their parents, spouses and children under 18 who have lived in Ukraine for at least three years. Yet, the potential positive effect of these measures may be limited by the scope of the problem as well as by the lack of adequate response to related challenges. In 2000 alone, Ukraine signed 28 legal documents in the field of countering international terrorism, illicit drug trafficking and illegal migration.

### **3.2. Labour migration**

The predominant majority of the flow of Ukrainian labour resources to the West falls on illegal emigration. Illegal labour migration of Ukrainian citizens creates tension in Ukraine’s relations with the EU members and the applicant countries. The influx of cheap labour from Ukraine causes not only concern of the authorities of the EU states but also protests of local trade unions. For instance, in August, 2001, the General Union of Workers of Spain demanded from the

national Government to put an end to the activity of companies engaged in employment of illegal immigrants from Ukraine.

According to the Ministry of Foreign Affairs of Ukraine, in 2000, the number of illegal Ukrainian immigrants in the applicant countries far exceeded the number of legal immigrants. In the Czech Republic, 17.5 thousand Ukrainian citizens had an official permission to work, while up to 100 thousand were employed illegally; nearly 50 thousand illegal immigrants worked in Slovakia; 10 thousand – in Hungary; 60-100 thousand, according to different sources – in Poland. In Portugal alone, there are nearly 80 thousand registered labour immigrants from Ukraine. According to the Transcarpathian Regional State Administration, in 2000, 120 thousand dwellers of the region searched for work outside the country.

### **3.3. The visa regime**

While introduction of visas in itself not a discriminatory practice or an indication of exclusion, in Ukraine's case its impact on travelling and exchange is enhanced by low standard of living of Ukrainians, which also accounts for high rate of labour migration on the international market (including committed and intentional illegal labour emigration).

Currently Ukrainian citizens can travel visa-free to 15 countries: ten countries of the CIS (except Turkmenistan), Mongolia and three EU candidate states - Poland, Hungary and Romania. The Baltic states introduced visa procedures for Ukraine in early 1990s. The visa regime, introduced by the Czech Republic and Slovakia in the summer of 2000, showed potential negative consequences for exchange between those countries and Ukraine. The number of trips of Ukrainian citizens to Slovakia in 2000 fell almost two-fold against 1999, and even greater – in the first half of 2001. The flow from Slovakia to Ukraine also became scantier (in 1999 – 104 thousand, in 2000 – 70.6 thousand, in the first half of 2001 – 20.6 thousand). In order to cope with the new challenge, on March 1, 2001, Ukraine and Slovakia introduced a simplified visa regime that involved issuing free visas for up to 180 days to a number of categories of professionals, children and students, and half-price visas for individuals travelling within bilateral cultural exchange programs. The increase in the number of qualified staff at consulates also had a positive effect. Similarly, following the EU's decision to move Bulgaria to the "white list" of states, Bulgaria announced the decision to impose visas on Ukrainians from June 2001 onwards, but shortly chose to postpone the step till October and make the visa regime as liberal and efficient as possible, due to consideration of potential damaging effect that the reduction of the number of Ukrainian tourists coming to Bulgaria could have on the country's tourist industry. Bulgaria imposed visas on Ukrainians in October 2001.

When the visa regimes were introduced, the ethnic composition of the Ukrainian population was not duly taken into account. For instance, the Association of the national-cultural communities of Bulgarians of Ukraine lodged protest with the Bulgarian leadership that, in their opinion, it had not taken into account the interests of 300 thousand ethnic Bulgarians living in Ukraine. Another factor that is seriously hinders contacts between Ukraine, the EU and the candidate states that have imposed visas on Ukrainians is the high visa fee that is unaffordable for most of Ukrainians.



As Ukraine is a country on the Schengen's "black list", the application and visa execution procedure is time-consuming and complicated by many bureaucratic requirements. On the average, obtaining a visa takes from two to six weeks.

## **4. Actors and Stakeholders**

### **4.1. Ukrainian government**

The Ukrainian government has repeatedly manifested its commitment to expanding cooperation to the EU and adopted a number of documents declaring integration to the EU as its strategic goal. Recently, the EU membership has become to be seen as a home policy, not a foreign policy goal. The approval of closer cooperation with the EU is almost unanimous in the Ukrainian government. However, there is an obvious lack of understanding of what exactly the declared European integration course is supposed to involve and what further steps should be made in the practical field. Furthermore, the Ukrainian government lacks adequate institutions and procedures that would bring about a new quality of the EU-Ukraine cooperation. The policy analysis and planning capacity of the government remains weak, so is the quality of coordination and information exchange between the agencies involved in the area of the JHA.

### **4.2. Ukrainian population**

In general, Ukrainians view the process of EU enlargement positively and pro-European feelings in the country are widespread. However, due to the absence of debate about the enlargement process it is unclear what part of that support is related to the lack of knowledge what the EU is and what the enlargement implies. Meanwhile, Ukrainians' opinions about the EU tend to become more cautious: only 18.4% of respondents believes that the EU countries treat Ukraine as a potential equal partner; the majority of the population (62.4%) is sure that the EU members are either indifferent to Ukraine's possible admission (35.4%) or are sceptical about it, suggesting that Ukraine has no prospects of joining the EU (27%) (according to opinion poll data gathered by the Ukrainian Center for Political and Economic Studies, Kyiv, Ukraine, September 2001). The position of the population will be determined by the concrete results of co-operation with the enlarged European Union and the ability to diminish possible negative implications of EU enlargement for Ukraine.

The general sentiment about introduction a stricter border regime between Ukraine and the EU is negative, particularly in Western Ukraine that not only sees itself as a part of European culture, but engage broadly in crossborder exchange and "business tourism", i.e., petty shuttle trade, the main source of income for many Ukrainians. For instance, in 2000, the Transcarpathian, Lviv and Chernivtsi regions accounted for 43.3% of foreign travel, which indicates that a significant part of the population of those regions engages in commercial tourism. Significant proportion of younger, better educated Ukrainians have considered possibilities for emigrating to seek jobs (often illegally) in the candidate states and the EU.

The problem of illegal labour emigration from Ukraine also has an unfavourable psychological dimension. Dumping on the labour markets of the European countries does not encourage better attitude to Ukrainian citizens in those countries. According to an opinion poll, conducted by the

Ukrainian Center for Economic and Political Studies in 2001, a significant share of respondents (39.4%) is sure that population in the applicant countries tends to treat Ukrainians as “second-grade” people; 34.7% believes that in those countries, people are indifferent to Ukrainian citizens. Only 14.1% of the polled believes that Ukrainians are treated as equals. At that, the majority of respondents does not expect that the negative attitude to Ukrainians will change for the better with the accession of the applicant countries to the EU. Only one in five (20.1%) believes that the treatment of Ukrainian citizens will improve; the majority of respondents (57.9%) is sure that it will either remain the same or even deteriorate.

#### **4.3. Poland and other neighbour countries**

The adoption of the Schengen acquis by the accession states will profoundly re-shape their relations with neighbouring non-accession states, primarily with Ukraine. While in the cases of the accession countries the adjustment to the JHA acquis have been supported by the pre-accession aid instrument and policies, many issues in relations between the accession states and Ukraine remain unanswered.

The visa issue is particularly important in the context of Ukrainian-Polish relations. In addition to strong historic and cultural ties, Poland’s strong position in favour of minimizing negative effects of its future EU membership on its relations with Ukraine is prompted by massive contacts at the microlevel between eastern Polish and western Ukrainian regions that amount to more than 10 million of border crossings a year and nourish a substantial part of economy at both sides of the border. The introduction of visas - even together with opening new consulates, building infrastructure and providing advanced equipment to border crossing points, arranging a selection of affordable-cost long-term visas etc. - will inevitably reduce the bilateral exchange, curtail (and in some cases have already curtailed) cross-border exchange, tourism and business contacts and cost up to 60 percent of jobs in some towns. Aware of the implications, at the end of November 2001, Poland officially announced it would not impose visas on Ukrainian citizens till 2003, when it is expected to join the EU.

In addition to considering ways to soften the potential shock of the future visa regime, Poland works toward assisting Ukraine to manage its borders better. On June 25, 2001, Ukraine and Poland signed an agreement about controlling the border jointly designed to facilitate cooperation between Ukrainian and Polish borderguards, allow them to use the border infrastructure more effectively by sharing the checkpoints, and enable Ukraine to reduce the number of personnel at the Western border while strengthening the Ukrainian-Russian border for countering illegal migration.

#### **4.4. The EU**

While in general the EU has shown limited enthusiasm about Ukraine’s European integration initiatives and claims for “signals” and a certain formal status, it has been more inclined to pursue an effective dialogue in the JHA. The development of an Area of Freedom, Security and Justice has been proclaimed in the Treaty of Amsterdam as one of the EU integration objectives. Under the Belgium Presidency, the JHA has been announced a priority area. The September 11 events served as an additional push for tightening up the external borders of the EU and

coordinating the member states' immigration and asylum policies. On the other hand, a number of participants of the policy process in the EU, in particular, human rights groups, are becoming increasingly aware of the need of reducing prejudice, intolerance to migrants and xenophobic attitudes that are on the increase among the population.

The EU cooperates with the accession countries in the field of the JHA through a number of institutions, primarily the Council of JHA and Europol, and a variety of projects, including pilot training and evaluation programmes for the accession states like the STOP. The JHA acquis is an integral part of each candidate country's accession procedure, and cooperation in the JHA is one of the objectives of the Common Foreign and Security Policy.

However, despite the manifested interest in managing its eastern border properly, the EU so far has not started a broad cooperation with Ukraine.

### **The institutional aspect of the EU-Ukraine cooperation in the field of the JHA**

A number of institutions have been involved in efforts to ensure effective cooperation between the enlarged EU and Ukraine in the field of the JHA. Specifically, the State Committee of Ukraine for Border Protection and the State Customs Committee have discussed cooperation with their counterparts in the EU in strengthening Ukraine's border management and sought support for development of border infrastructure. Specific tasks in the area of the JHA have been performed by the Ministry of the Interior (to implement a Complex Program for Preventing Crime in 2001-2005 and to draft a National Program for Prevention of Spread of Drugs and Reducing Demand for them for the Period of up to 2005), the Ministry of Foreign Affairs (to increase inter-departmental coordination for minimising possible negative consequences of accession of countries of Central Europe to the EU), the Ministry of Justice (in charge of approximation of Ukraine's legislation to the EU standards), and the National Security and Defense Council. To ensure consistency and continuity of the efforts, the position of the Government Secretary for European Integration has been introduced within the Ministry of Foreign Affairs.

Cooperation in the field of JHA will be further institutionalized with the development of an EU-Ukraine Action Plan on Justice and Home Affairs (expected to be ready by the end of 2001) that involves interaction between the EU and Ukrainian institutions for countering illegal migration, trafficking in human beings, organized crime and drugs; preparation of readmission agreements, etc. Prospects for improving cooperation in the area include using experience of the EU Twinning programmes for development of Ukrainian institutions, like the programmes were used in the accession countries.

## **5. Options for Consideration**

Cooperation in the field of justice and home affairs (JHA) is of immediate need and critical significance for countering the challenges, caused to stability and security by proliferation of organized crime, money laundering, smuggling, trafficking in human beings and drugs, as well as for preventing perceptions of insecurity, xenophobia and fear in Europe. Hence, cooperation in the field of the JHA has the potential of becoming one of the most effective and realistic aspects of the much-discussed Ukraine-EU "strategic partnership". The alternative, made as real

as ever by the requirement that the candidate states comply fully with the Schengen regime before they actually join the EU, would be a prominent "Schengen wall" between the enlarged EU and Ukraine.

5.1. Cooperation with the EU and the candidate states in the field of the JHA gives Ukraine an important role in the integration process that does not need to be limited to (and perceived as) that of a buffer zone, a "cordon sanitaire" or "the last barrier". When asked by officials and professionals from the EU states about the kind of assistance in the field of the JHA that Ukraine needs, Ukrainian officials routinely ask for more money for building temporary facilities for accommodating detailed illegal migrants and more money for deporting them. Priorities for Ukraine in the field of countering illegal migration have been defined as finishing the procedure of demarcation of the eastern border, finding financial resources for construction of temporary detention facilities for, and deportation of illegal immigrants, and establishment of a single executive entity to deal with migration issues. Yet, important as it is, availability of additional funding for the above purposes may help deal with the consequences but cannot remedy the cause of the problem.

5.2. Opportunities for the Ukraine-EU cooperation in the field of the JHA include creation of a common information environment and information sharing for fighting organized crime, corruption and money laundering, transfer of practical experience and skills from the EU states and the candidate states to Ukraine, and EU support for development of Ukrainian border management and control infrastructure.

5.3. The search for an effective policy for EU-Ukraine cooperation in the JHA is hindered by the lack of a proper border between Ukraine and the Russian Federation. Furthermore, for political reason and due to Ukraine's economic dependence on Russia, particularly in the energy sector, it is unlikely that the process of demarcation of the border will take place in the foreseeable future. Given the presence of up to 2 million illegal migrants on the territory of the Russian Federation, likely to increase to some 3 million shortly unless adequate measures are taken, Ukraine's desire to establish proper border management arrangements is natural, as it affects Ukraine's security as well as prospects for its integration with the EU. Therefore, in order to develop the EU-Ukraine cooperation in the field of JHA successfully, Ukraine should also seek to settle the issue of borders and cooperate with Russia in the JHA.

5.4. Even though the European Union does not regard Ukraine as a suitable candidate for accession nowadays, there are areas in which closer cooperation is possible, mutually beneficial and, hence, highly desirable. These include, primarily, the areas of a common policy of countering organised crime, a common asylum and immigration policy, and a common foreign and security policy. As Ukraine will soon border on the European Union, and provided the course towards European integration as Ukraine's strategic goal remains, it seems reasonable to take measures to facilitate EU-Ukraine cooperation by means of shaping Ukraine's own asylum and immigration policy and measures to counter organised crime so that to make them compatible with the EU policies. Cooperation in the field of common prevention of the spread of organised crime and trafficking is being established, and may develop successfully if more coordination and compatibility are brought into the process by both of the parties, Ukraine and the EU. It is also necessary to continue dialogue at the expert level on the issues of visa policies

and develop consultations between Ukrainian and EU experts on ways of preventing negative implications of imposing a visa regime on Ukrainians by the EU candidate states.

5.5. A new quality of dialogue between Ukraine and the EU in the area of JHA may be reached within the framework of efforts taken by the Belgian Presidency to develop a network of member states and candidate states to counter organized crime, trafficking in human beings and regulate migration. In this context, the prospective EC's Action Plan for JHA for Ukraine, announced by Chris Patten at the Plenary Session of the European Parliament in March 2001, can contribute substantially to increasing efficacy of Ukraine's border control and customs services and reducing the flow of illegal migration through the Ukrainian territory. The lack of a coherent integrated border management strategy and of a single body responsible for coordinating the JHA activities may have a dramatic effect on the whole effort.

However, efforts to counter organized crime, illegal migration and trafficking in Ukraine may be feckless unless they are directly connected with building up integrity of Ukrainian borderguards and police officers whose corruption and involvement in facilitating illegal migration and trafficking has been repeatedly admitted by law-enforcement authorities.

## **6. Financial Considerations**

The steps towards better EU-Ukraine cooperation in the JHA will require substantial increase in technical and financial assistance from the EU, but benefits of successful cooperation will largely exceed the costs of the efforts. The initial EC funding for improving the border controls in Ukraine (and Moldova) - Euro 3.9 million - will be made available through TACIS, but it remains to be seen how effectively it will be used. Ukraine's own scarce budget allocations for activities in the field of the JHA are divided unevenly between multiple agencies that deal with various issues. As a result, little effect has been achieved. Therefore, in order to improve the situation in the field of the JHA, both the approach to allocating the funding and the volume of funds available should be reconsidered.

## **7. Conclusions and Recommendations**

It is generally accepted that introduction of visa regimes as such does not create an effective barrier to illegal migration, drugs and organized crime. In order to maintain the integration processes in Europe and transform it into one security area, there is a need for a flexible and innovative policy to respond to common challenges. In the early 1990s, new opportunities for free movement in Central and Eastern Europe contributed substantially to overcoming historic grievances and mutual prejudice. The regional exchange and cooperation should not vanish after the EU enlargement takes place.

In order to counter challenges of illegal and labour migration and related economic, political and humanitarian problems, a range of general and issue-specific policy recommendations are made: (a) general recommendations for an improving the current dialogue and developing a sound policy of the EU-Ukraine cooperation in the field of the JHA; (b) recommendations for an improved visa policy; (c) recommendations for an improved labour migration policy.

While the area of the justice and home affairs have been traditionally seen as exclusively the area of competence of the state, the trends of globalisation and the growth of the role of civil society in governance, as well as demonstrated inability of the governments alone to provide an adequate response to the global challenge of illegal migration, this paper offers (d) recommendations for the involvement of civil society in the process.

### **7.1. General policy for countering illegal migration**

A single agency to coordinate activities aiming at addressing the issues of migration should be set up, with functions and procedures compatible with those of the EU.

A migration policy, compatible with policies of the EU states, should be adopted.

Ukraine should join the International Organisation for Migration (IOM), in which it holds an observer status from 1993, thus, securing significant increase in the informational, technical and material assistance to Ukraine from IOM for fighting illegal migration.

A policy, standards and practices of border protection, modelled on the Polish Joint Integrated Border Management Strategy, should be developed to improve border protection.

The adoption and implementation of the large-scale Joint Plan of Action of Ukraine and the EU in the Area of Justice and Internal Affairs should be expedited.

Ukraine should improve the regime of its eastern and north-eastern borders by finalising the delimitation and launching the process of demarcation of its borders with the Russian Federation.

Cooperation within the framework of the OSCE programme should be intensified, and requests for technical assistance of the EU should be structured in order to secure more funding and transfer of expertise for addressing the issues of JHA.

Specifically, priority should be given to modernisation of the border infrastructure and development of an integrated common information environment on migration and information sharing for fighting illegal migration and organized crime.

A program of “twinning” between institutions involved in the JHA in the EU and the candidate states, and in Ukraine should be established to promote better cooperation, in particular, between the customs and borderguard services of Ukraine and the enlarged EU.

The Polish-German border regime may be taken as an example for optimising the border regime between Ukraine and Poland after the latter’s accession to the EU.

Ukrainian Foreign Ministry should intensify negotiations with the neighbouring countries, primarily with Russia and Belarus, for signing intergovernmental readmission agreements. This process should be synchronised with the conclusion of relevant documents between Ukraine and EU members

A dialogue at the expert level on the issues of visa policies, and consultations between Ukrainian and EU experts on ways of preventing negative implications of imposing a visa regime on Ukrainians by the EU candidate states should be continued and developed to involve independent think tank expertise.

## **7.2. Visa policy**

The shock of introduction of visas may be softened by streamlining the procedure of receiving a visa and crossing a border, by means of increasing the number of consular personnel and modernisation of border checkpoints, and improving the performance of consulates.

The visa problem can be better addressed through introduction of a variety of kinds of visas. The suggested options include introduction - prior to the EU accession for the duration of the transition period between the accession and the enacting of the Schengen regime for citizens of the new member states - of a national long-term, probably multiple visa, valid only for entry to the candidate state that issued it, and low-cost short-term single-entry visas. Multiple Schengen visas for frequent travellers, businessmen, academic professionals and residents of the border regions may help maintain intensive cross-border exchange.

The Ministry of Foreign Affairs should initiate an intergovernmental forum involving Ukraine, Poland, Romania and Hungary to discuss the issue of co-ordination of the national visa policies and minimising possible negative implications of introduction of visas against Ukrainians.

The Ukrainian members of the Ukraine-EU Cooperation Council should initiate the discussion of the conditions of withdrawing Ukraine from the EU's "black list".

## **7.3. Labour migration policy**

The issue of countering illegal labour migration requires a broad spectrum of joint efforts of the EU, the candidate states and Ukraine, from assistance in (or investment into) the creation of new jobs in Ukraine to adoption of relevant legalisation on labour migration and increasing relevant quotas.

The medium-term agenda of the EU-Ukraine cooperation in the JHA should involve agreements on labour migration and social protection of Ukrainian workers abroad.

The Ministry of Economy and European Integration should join forces with local authorities of the border regions and authorities in the neighbouring countries in drafting a plan for cross-border cooperation and border region development within the framework of the euroregions (primarily the Carpathian euroregion, also the Buh, the Upper Prut, and the Lower Danube) with the support of the TACIS and PHARE funds.

A comprehensive multilateral programme of migration control in Ukraine should be launched to include monitoring by the EU, the OSCE, and the ÎÎÎ in order to broaden the possibilities for employing technical assistance of the EU and other international organisations to improve maintenance of the infrastructure of Ukraine's eastern and northern border.

An awareness campaign on legal and humanitarian implications of illegal emigration should be expanded, particularly in western Ukraine that has been traditionally the main donor of labour migration (including illegal labour migration) to the West.

Streamlined licensing procedures and control should be applied to migrant labour recruitment firms.

#### **7.4. Involvement of civil society**

Independent think tanks should be involved in formulating, drafting, implementing and evaluating policies for EU-Ukraine cooperation to ensure a broader dialogue and consideration of interests of the stakeholders.

NGOs and the media should be involved in facilitating better understanding of challenges related to illegal migration, particularly illegal labour migration and trafficking in human beings.

The role of NGOs and the media is critical in prevention of human rights abuse in the pursuit of the JHA objectives

A broad public debate should be launched to prevent the growth of intolerance and exclusion of migrants.